

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: TIM HUTCHESON MARSHALL COUNTY, IOWA	ADMINISTRATIVE CONSENT ORDER NO. 2016-AQ- <u>25</u> NO. 2016-SW- <u>18</u>
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TO: Tim Hutcheson
2169 – 180th Street
Marshalltown, Iowa 50158

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Tim Hutcheson for the purpose of resolving solid waste and air quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bill Gross
Iowa Department of Natural Resources
Field Office No. 5
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324
Phone: (515)-725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515-725-9551

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the

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rules promulgated or permits issued pursuant to that division; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Tim Hutcheson, dba Hutcheson Lumber and Millwork, operates a sawmill located at 2158B Mulberry Street, Marietta Village, in Marshalltown, Marshall County, Iowa (the site). The site is located on the east side of Highway 330 in the Village of Marietta, northwest of Marshalltown, and across the street from Mr. Hutcheson's residence. The property is owned by David Solo.

2. On June 19, 2015, DNR Field Office No. 5 received a complaint that Tim Hutcheson was burning scrap generated from cutting up old power poles made from treated wood. On June 26, 2015, Bill Gross of DNR Field Office No. 5 investigated, and found ashes and unburned trade wastes in a pit east of the sawmill building. The burn pit included dimensional lumber, a wooden pallet, a tire, plastic containers, at least one plastic bag of garbage, and other miscellaneous items. While he was at the site, Mr. Gross visited with Mr. Hutcheson and informed him of the prohibitions against illegal open burning and illegal open dumping. Mr. Hutcheson acknowledged that he had burned waste in the pit, and he stated that he would not burn in the future. Mr. Hutcheson was informed that the waste materials should be taken to the Marshall County Sanitary Landfill. Mr. Hutcheson has stated to DNR that some of the materials found in the burn pit were not placed there by him.

3. A July 7, 2015, Notice of Violation letter (NOV) was sent to Mr. Hutcheson. The NOV required that the site be cleaned up by August 1, 2015.

4. On July 13, 2015, DNR Field Office No. 5 received a second complaint that Mr. Hutcheson was open burning at the site. Mr. Gross visited the site on July 14, 2015, and observed that the former burn pit had been filled in and the ground had been leveled. Mr. Hutcheson stated that he had only burned brush from the site, which is allowable.

5. On November 17, 2015, DNR Field Office No. 5 received a third complaint that Mr. Hutcheson was open burning at the site. The complainant stated that Mr. Hutcheson was open burning treated wood again.

6. On November 18, 2015, Mr. Gross investigated and found smoldering sawdust, along with ashes and the charred remains of trade wastes, including cardboard barrels and dimensional lumber. As before, the burned

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material was located in a pit east of the sawmill building. Mr. Hutcheson was informed again of the state's open burning regulations.

7. A November 30, 2015, NOV was sent to Mr. Hutcheson, informing him of the state's open burning and solid waste disposal regulations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The illegal open burning of solid waste in this case demonstrates a violation of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Tim Hutcheson agrees to do the following:

1. Tim Hutcheson shall pay a penalty of \$1,000.00, within 45 days of the date this order is signed by the Director;

2. Tim Hutcheson shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning; and

3. Within 30 days of the date that this administrative consent order is signed by the Director, Tim Hutcheson shall properly dispose of all ashes and residue from burning at the site; and shall remove all waste, including trade waste,

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remaining at the site, by disposal at the Marshall County Sanitary Landfill; shall provide disposal receipts to DNR Field Office No. 5; and shall fill in and close the burn pit located east of the sawmill building at the site.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$1,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Tim Hutcheson received an economic benefit of at least \$150.00 by avoiding landfill and transportation costs. DNR estimates that one ton of trade waste was burned at the site. The landfill tipping fee is \$50.00, and transportation costs would be at least \$100.00. Therefore, \$150.00 is assessed for economic benefit.

Gravity of the Violation -- Open burning damages air quality in Iowa and can cause significant acute and chronic health effects. Particulate matter from the open burning of solid wastes released toxic substances into the air. This fire and related open burning threatens the integrity of the state's environmental programs and efforts to protect natural valuable resources. Therefore, \$425.00 is assessed for the gravity of the violations.

Culpability – Open burning prohibitions have been in place for over 35 years. It is the responsibility of Tim Hutcheson to know and abide by these rules. Further, Mr. Hutcheson was informed of the state prohibition against illegal open dumping and illegal open burning laws at least three times since June 2015, yet he continued to illegally dump and burn. Therefore, \$425.00 is assessed for culpability.


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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Tim Hutcheson. For that reason, Tim Hutcheson waives his right to appeal this order or any part thereof.

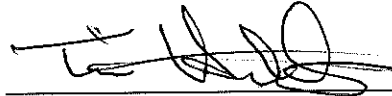
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 20th day of
December, 2016.



Tim Hutcheson

Dated this 1st day of
November, 2016.

DNR Field Office 5; Anne Preziosi; VII.C.2